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09/809,308	03/16/2001	Adolph Zarovinsky	11766-1	5397
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CANADA				
		EXAMINER		
		GART, MATTHEW S		
		ART UNIT		
		3625		
		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/809,308

Applicant(s)

ZAROVINSKY, ADOLPH

Examiner

Matthew s Gart

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NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

This application has been filed with informal drawings, which are acceptable for examination purposes only. Various figures contain improper shading and text, which may affect clarity when reproduced.

Applicant is required to submit a formal correction of the noted defects. Applicant is required to submit drawing corrections promptly. Drawing objections may no longer be held in abeyance.

### ***Claim Rejections - 35 USC §101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1-14 and 19-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The invention as recited in the claims is merely an abstract idea that is not within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

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Mere recitation in the preamble (i.e., intended use) or mere implication of employing a machine or article of manufacture to perform some or all of the recited steps does not confer statutory subject matter to an otherwise abstract idea. "A method of processing orders over the internet, etc." mere nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not affect or affect the underlying process.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claim 1-11 and 14-30 rejected under 35 U.S.C. 102(e) as being anticipated by Musgrove U.S. Patent No. 6,535,880.**

Referring to claim 1. Musgrove discloses a method of processing orders over the Internet, the method comprising:

- Identifying a customer (column 5, line 64 to column 6, line 29);
- Receiving details of a new product order from the customer (column 6, line 45 to column 7, line 6);
- Confirming details of the new product order with the customer (abstract);

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- Determining a date on which ordered products are to be delivered to the customer (column 5, lines 11-27); and
- Sending information pertaining to the new product order to at least one supplier (Figure 1).

Referring to claim 2. Musgrove further discloses a method comprising arranging for the delivery of products associated with the new product order to a delivery receiving location designated by the customer (column 6, line 45 to column 7, line 6: "Shipping Options").

Referring to claim 3. Musgrove further discloses a method comprising the step of coordinating the collection of a plurality of products from a plurality of suppliers for subsequent delivery to said delivery receiving location (abstract).

Referring to claim 4. Musgrove further discloses a method comprising displaying details pertaining to at least one of the following: outstanding orders, orders being processed, previously processed orders, saved orders (Figure 3: Transaction Record 54).

Referring to claim 5. Musgrove further discloses a method wherein said saved orders include repeat orders (column 7, lines 21-67).

The Examiner notes, the limitation of claim 5 is conditional because, as dependent on claim 4, the displaying of saved orders might never occur. Claim 5 is given little patentable weight.

Referring to claim 6. Musgrove further discloses a method comprising at least one of the following steps: displaying advertising material, displaying order statistics,

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displaying product information, displaying information relating to the preparation or use of products (column 5, lines 28-46).

Referring to claim 7. Musgrove further discloses a method comprising selecting at least one product from at least one group of products, and wherein the customer may only select products that the customer has been pre-authorized to select (column 5, lines 28-46).

Referring to claim 8. Musgrove further discloses a method wherein step (e) is performed by at least one of the following: electronic mail, fax, telephone, any printed means, any electronic means (abstract).

Referring to claim 9. Musgrove further discloses a method wherein step (e) is performed in real-time (column 7, lines 52-67).

Referring to claim 10. Musgrove further discloses a method comprising the step of communicating details pertaining to the product order to at least one component provider of the at least one supplier (Figure 1).

Referring to claim 11. Musgrove further discloses a method wherein all the steps comprising the method are performed in real-time (column 7, lines 52-67).

Referring to claim 14. Musgrove further discloses a method comprising displaying status information on an order for tracking purposes (column 5, line 64 to column 6, line 29).

Referring to claims 15-18. Claims 15-18 are rejected under the same rationale as set forth above in claims 1-11 and 14.

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Referring to claims 19-24. Claims 19-24 are rejected under the same rationale as set forth above in claims 1-11 and 14.

The Examiner notes, claim 20 discloses that said customer is a grocery store or restaurant. Data identifying a customer as a grocery store or restaurant is not functionally related to the substrate of the invention. This distinguish material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

The Examiner notes, claims 21 and 22 discloses a product shelf life range. Data identifying a product shelf life range is not functionally related to the substrate of the invention. This distinguish material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

Referring to claims 25-30. Claims 25-30 are rejected under the same rationale as set forth above in claims 1-11 and 14.

The Examiner notes, claim 26 discloses that said customer is a grocery store or restaurant. Data identifying a customer as a grocery store or restaurant is not functionally related to the substrate of the invention. This distinguish material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

The Examiner notes, claims 27 and 28 discloses a product shelf life range. Data identifying a product shelf life range is not functionally related to the substrate of the invention. This distinguish material will not distinguish the claimed invention from the

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prior art in terms of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musgrove U.S. Patent No. 6,535,880 in view of Auger U.S. Patent No. 6,115,696.**

Referring to claims 12-13. Musgrove discloses a method according to claim 1 as indicated supra. Musgrove does not expressly disclose a method comprising charging a fee to the customer and to at least one supplier. Auger discloses a method comprising charging a fee to the customer and to at least one supplier (Auger: column 4, line 28-30 and column 5, line 5-22). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have modified the system of Musgrove to have included the limitations of Auger as discussed above in order to integrate plural merchants into an on-line shopping system (Musgrove: column 1, lines 8-15).



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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Musgrove, U.S. Patent No. 6,714,933, March 30, 2004, discloses a content aggregation method and apparatus for on-line purchasing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew S Gart whose telephone number is 703-305-5355. The examiner can normally be reached on 8:30AM to 5:00PM m-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MSG  
June 24, 2004

  
Jeffrey A. Smith  
Primary Examiner